

§ 147-86.72. ABLE Program Board of Trustees.

(a) Board. – There is established a Board of Trustees to provide oversight of the general administration and proper operation of the ABLE Program and to determine the appropriate investment strategy for the ABLE Program Trust. The Board of Trustees shall consist of the following six members:

- (1) The State Treasurer, ex officio, or the State Treasurer's designee, as chair.
- (2) The Commissioner of Banks, ex officio, or the Commissioner of Banks' designee.
- (3) The Secretary of the North Carolina Department of Health and Human Services, ex officio, or the Secretary's designee.
- (4) A person appointed by the Governor having experience in investments and finance.
- (5) A person appointed by the President Pro Tempore of the Senate having experience in advocacy for the disabled.
- (6) A person appointed by the Speaker of the House of Representatives that is an immediate family member of an eligible individual or a guardian of an eligible individual.

(b) Terms. – The members of the Board, except those members serving in an ex officio capacity, shall be appointed for terms of three years and shall serve until their successors are appointed and qualified. Vacancies are filled in the same manner as the original appointment. No appointed member of the Board may serve longer than any of the following:

- (1) Two consecutive three-year terms.
- (2) Three consecutive terms of any length, in the event that one or more of the terms is for less than three years in duration or the member serves a partial term as a result of filling a vacancy.
- (3) Eight consecutive years, regardless of term lengths.

(c) Duties. – The Board of Trustees is authorized to:

- (1) Delegate the authority to the State Treasurer to develop and perform all functions necessary and desirable to (i) administer the ABLE Program Trust in such a manner as to meet and comply with the requirements of the federal ABLE Act and federal regulations under the Act, (ii) implement the investment strategy of the Board, and (iii) provide other services as the Board shall deem necessary to facilitate participation in the ABLE Program Trust.
- (2) Notwithstanding provisions of Article 3 of Chapter 143 of the General Statutes, engage the services of consultants on a contract basis for rendering professional and technical assistance and advice.
- (3) Notwithstanding the provisions of Article 3 of Chapter 143 of the General Statutes, retain the services of auditors, attorneys, investment counseling firms, custodians, or other persons or firms possessing specialized skills or knowledge necessary for the proper administration of investment programs that the Board administers pursuant to this Article.
- (4) Develop marketing plans and promotional material.
- (5) Establish the methods by which the funds held in accounts shall be dispersed.
- (6) Establish the method by which funds shall be allocated to pay for administrative costs.
- (7) Do all things necessary and proper to carry out the purposes of this act.

(d) Investments. – The Board shall determine and document in an investment policy statement an appropriate investment strategy for the ABLE Program Trust containing one or

more forms of investment or strategies for investment from which account owners may select. The Board shall authorize the State Treasurer to be responsible for engaging and discharging investment managers and service providers, including contracting and contract monitoring, to implement the investment strategy established by the Board. All amounts maintained in an account shall be invested according to the account owner's election of one or more of the strategies approved by the Board. Each strategy may include a combination of fixed income assets and preferred or common stocks issued by any company incorporated, or otherwise located within or outside the United States, or other appropriate investment instruments to achieve long-term return through a combination of capital appreciation and current income. If the Board approves multiple forms of investment as investment strategy options, transfers of an account owner's accumulated funds shall be permitted among the various approved forms of investments, subject to reasonable restrictions approved by the Board.

(e) Discharge of Duties by the Board. – The assets of the ABLE Program Trust shall be held in trust for the designated beneficiaries. The assets of the ABLE Program Trust shall at all times be preserved, invested, and expended for the exclusive purpose of providing benefits to designated beneficiaries and paying reasonable expenses of administering the ABLE Program Trust and investing the assets of the ABLE Program Trust. Compliance by the Board with this section must be determined in light of the facts and circumstances existing at the time of the Board's decision or action and not by hindsight. The Board shall discharge its duties with respect to the ABLE Program Trust as follows:

- (1) Solely in the interest of the designated beneficiaries.
- (2) With the care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose.
- (3) Impartially, taking into account any differing interests of designated beneficiaries.
- (4) Incurring only costs that are appropriate and reasonable.
- (5) In accordance with a good-faith interpretation of the law governing the ABLE Program Trust.

(f) Immunity. – A person serving on the ABLE Board of Trustees shall be immune individually from civil liability for monetary damages, and exempt to the extent covered by insurance, for any act or failure to act arising out of that service except where any of the following apply:

- (1) The person was not acting within the scope of that person's official duties.
- (2) The person was not acting in good faith.
- (3) The person committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.
- (4) The person derived an improper personal financial benefit, either directly or indirectly, from the transaction.

(g) Report. – The Board shall submit an annual evaluation of the ABLE Program and prepare and submit an annual report of such evaluation to the Joint Legislative Oversight Committee on Health and Human Services.

(h) Other States Contracting for North Carolina to Provide Program. – With consent of the State Treasurer, the Board may enter into agreements with other states to either (i) allow North Carolina residents to participate in a plan operated by a contracting state with a qualified ABLE program or (ii) allow residents of other states to participate in the qualified North Carolina ABLE Program Trust.

(i) Arrangements for North Carolina Program to Be Provided in Partnership With Other States. – Notwithstanding any other provision of this Article, in addition to or in lieu of

establishing a North Carolina ABLE Program and ABLE Program Trust, the Board may do either of the following:

- (1) Enter into an agreement with one or more states, or a consortium of states, that has a qualified ABLE program for the provision of all services necessary to allow residents of North Carolina to participate in the qualified ABLE program of the other state, states, or consortium.
- (2) Facilitate or otherwise provide access to allow residents of North Carolina to participate in qualified ABLE programs operated by another state, states, or consortium.

The Board shall take action only after due diligence that includes a fiduciary analysis that indicates the qualified ABLE program offered by the other state, states, or consortium will (i) meet all the requirements of this Article and (ii) be more efficient and cost-effective than an ABLE program provided directly by the Board. If the Board enters into an arrangement authorized by this subsection, the Board shall meet on a semiannual basis to evaluate the effectiveness of the services being provided. (2015-203, s. 1; 2016-56, s. 9(b); 2017-125, ss. 5(a), 5(b).)